

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF WYOMING

3 BCB CHEYENNE, LLC, d/b/a
4 BISON BLOCKCHAIN, a Wyoming
5 limited liability company,

DOCKET NO. 23-CV-00079-ABJ
(Pages 1 through 78)

6 Plaintiff,

7 vs.

8 MINEONE WYOMING DATA CENTER,
9 LLC, a Delaware limited
liability company; MINEONE
10 PARTNERS, LLC, a Delaware
limited liability company;
11 TERRA CRYPTO, INC., a Delaware
corporation; BIT ORIGIN LTD.,
12 a Cayman Island company;
SONICHASH, LLC, a Delaware
13 limited liability company;
BITMAIN TECHNOLOGIES HOLDING
COMPANY, a Cayman Island
company; BITMAIN TECHNOLOGIES
14 GEORGIA LIMITED, a Georgia
corporation; and JOHN DOES 1-20,
15 related persons and companies
who control or direct some or
16 all of the named Defendants,

Mammoth, Wyoming
Monday, August 19, 2024
2:42 p.m.

17 Defendants.

18
19 TRANSCRIPT OF INFORMAL DISCOVERY CONFERENCE

20 BEFORE THE HONORABLE STEPHANIE A. HAMBRICK
UNITED STATES MAGISTRATE JUDGE

21
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1 (Proceedings commenced 2:42 p.m., August 19, 2024.)

2 THE COURT: All right. Jess, can you hear me?

3 THE COURTROOM DEPUTY: Yes, I can. Thank you, Judge.

4 THE COURT: Okay.

5 All right. Good afternoon, everybody. I'm having
6 some technical difficulties here real quick.

7 All right. We are here for an informal discovery
8 conference in Case 23-CV-79. The parties have submitted some
9 letters, and plaintiff submitted some pleadings last night and
10 other information.

11 I do have -- a court reporter is on with us who is
12 reporting so that, if I need to issue a text order, I can be
13 sure to cover all the topics. Also on with me is my law clerk
14 Benjamin Kelly. He will be helping me with this hearing, as
15 well.

16 I wanted to set a few ground rules for the hearing.
17 We have several issues to discuss. My hope is that we can
18 discuss them one at a time.

19 My plan is to start with the issues as bullet-pointed
20 in Ms. Colbath's August 14th of 2024 letter. We'll go through
21 those.

22 I'm going to let Ms. Colbath speak to each bullet
23 point one at a time, and then, Mr. Murphy, I'm assuming you'll
24 be responding to those or whoever else wants to respond, and
25 then I'll give Ms. Colbath an opportunity, in a sense, to

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1 reply to that argument.

2 I expect there will be no interrupting each other,
3 and there will be no interrupting the Court. I expect there
4 to be no name-calling of other parties. Everybody's to be
5 respectful and not to speak out of turn.

6 I will indicate to you when it's your opportunity to
7 speak, and I assure you I will give both sides an opportunity
8 to present their arguments as to each issue, but I don't want
9 interrupting and I don't want people saying, you know, "If the
10 Court will allow me." I will come to you and I will allow you
11 to speak when it's your turn.

12 And no raised voices, as well. Everybody here is
13 experienced attorneys, and I know you can conduct yourself
14 with the appropriate decorum in this situation.

15 So I want to make sure that I know who all I have
16 present. I've already lost my list.

17 All right. Well, Mr. Murphy, why don't you go ahead
18 and tell me who else is present for the plaintiffs.

19 MR. MURPHY: All right. Thank you, Judge Hambrick.

20 This is Pat Murphy in Casper. And with me is Scott
21 Murray in my office and that's it.

22 THE COURT: All right. And, Mr. Murphy, will you be
23 doing -- primarily speaking on behalf of the plaintiffs?

24 MR. MURPHY: I think I'll be the only one talking,
25 Your Honor.

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1 THE COURT: All right. Thank you. It makes it
2 easier if I know ahead of time.

3 Ms. Colbath, can you tell me who is present with you
4 for your clients?

5 MS. COLBATH: Yes.

6 So local counsel, Sean Larson and Kari Hartman, are
7 present. And from my office I have two of my associates, one
8 more -- one to help as necessary and just so that they get
9 experience practicing and -- and handling conferences like
10 that, and that is David Forrest and Alex Inman.

11 THE COURT: All right. And then I -- just made a
12 list, I swear. It disappeared on me.

13 All right. And I believe we have others present for
14 other defendants. Is that correct?

15 MR. GOTTLIEB: Your Honor, Marc Gottlieb.

16 I don't want to interrupt, but it seemed like you
17 were asking the question so I'll answer it.

18 THE COURT: Yes.

19 MR. GOTTLIEB: Marc Gottlieb on behalf of BitOrigin
20 and also SonicHash. And with me also present is our local
21 counsel, Meggan Hathaway. I don't know if there's anybody
22 else present from Meggan's office.

23 Meggan, you can answer that.

24 I don't believe so.

25 MS. HATHAWAY: It's just me today, Your Honor.

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ARGUMENT - COLBATH

7

1 Thank you.

2 THE COURT: Thank you. All right.

3 Is there anybody else present?

4 (No response.)

5 THE COURT: Okay. All right.

6 So, as I said, I want to start, Ms. Colbath, with
7 your letter of August 14th, 2024. I have reviewed it.

8 I've also reviewed the -- your letter of August 12th, 2024, as
9 well as Mr. Murphy's pleadings and letters from yesterday, and
10 then, Ms. Colbath, you had a response you filed -- or a
11 statement -- that you filed today, as well. I haven't
12 necessarily reviewed all of those in great detail, but I think
13 I am up to speed.

14 So the first thing I wanted to discuss, Ms. Colbath,
15 was your first bullet point about the documents between
16 March 15th of 2023 and May 3rd.

17 Do you want to first speak to that request?

18 MS. COLBATH: Sure. And I think it's pretty
19 self-explanatory, Your Honor.

20 In connection with prior discovery disputes decided
21 by Judge Rankin when he was our Magistrate Judge, the issue of
22 what -- the cutoff date for production was discussed. And if
23 you look at ECF No. 190, you'll see that he set a -- May 3rd,
24 the date of the Federal District Court filing, and so we just
25 want a level playing field here. We have produced

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ARGUMENT - COLBATH

8

1 documents -- we've actually produced documents after that
2 date.

3 Mr. -- BCB's counsel says that something that
4 happened subsequent -- we had an evidentiary hearing on
5 June 26th relating to an attachment application, and, in
6 connection with that, I sought to introduce a March 2023
7 email, which Judge Johnson did not permit, and he made some
8 comment about saber rattling at that time. The issue that
9 Judge Johnson was weighing in on was a document in a 90-minute
10 evidentiary hearing, obviously, that doesn't guide the
11 discovery time lines.

12 There have been documents post -- postcommencement of
13 this Federal District lawsuit. For instance, various loans
14 that have become an issue.

15 And so, again, we want the plaintiff to comply with
16 Judge Rankin's order and the deadline that he thoughtfully set
17 in his May 20th, '24, decision. There's no basis for one date
18 to apply to the defendants and a totally separate date apply
19 to the plaintiff, and we believe that there are -- there are,
20 obviously, relevant documents during that period or
21 plaintiff's counsel would not be fighting so hard.

22 We complied and they should, too. I mean, it's
23 very -- it's pretty straightforward.

24 THE COURT: Thank you, Ms. Colbath.

25 Mr. Murphy, did you want to respond to this request?

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ARGUMENT - MURPHY

9

1 MR. MURPHY: If I might, Your Honor. Thank you.

2 And I did lay all of this out on pages 8 and -- and 9
3 of my letter to Your Honor here very recently.

4 The interesting thing about this is that the first
5 lawsuit, the Chancery Court lawsuit, was filed on March 15th.
6 That's when Judge Johnson remarked in the evidentiary hearing
7 that the parties were at swords' point, which means all the --
8 the facts had happened that would give rise to the complaint
9 and, at that point, they're just in a litigation posture, and
10 he pointed out that the March 16th, 2023, email from
11 Dr. Jiaming Li was simply that. The parties were at swords'
12 point; we were adverse to one another.

13 All of those -- really -- those communications after
14 that point -- nearly all of them are privileged documents,
15 either by the attorney-client privilege or the attorney work
16 product and materials prepared in anticipation of litigation
17 privileges. So there wouldn't be very much.

18 And Ms. Colbath, I think, is mistaken when she says
19 that there must be relevant documents; otherwise, Mr. Murphy
20 wouldn't be arguing.

21 No. The reason I'm arguing against that is because
22 Judge Johnson himself found that the March 16th email from
23 Dr. Li was not admissible or relevant because the parties were
24 at swords' point.

25 And it's true that Judge Rankin ruled -- he said that

1 the MineOne defendants did have to produce their documents up
2 to May 3rd, but that was back in late March. As we spun
3 forward into the summer and had the emergency writ issue and
4 we litigated that issue very hard on June 26th, it became very
5 apparent from the transcript -- and I provided Your Honor with
6 the excerpt of what Judge Johnson said in the transcript about
7 those materials after March 6th not being relevant.

8 And that's why I think that -- I think that's what
9 His Honor, Judge Johnson, feels is the relevant cutoff date,
10 is March 15th, on the day we filed the Chancery Court lawsuit.

11 And I don't think that Your Honor knows about this,
12 but we filed that, and then the MineOne defendants opted out
13 of it. It's -- it's become one of the most unfortunate things
14 in Wyoming, that any defendant in a Chancery Court lawsuit can
15 simply opt out, and then the Court has to dismiss it. They
16 opted out, it got dismissed by Judge Steve Sharpe, the
17 Chancery Court Judge, and then we refiled in this court on
18 May the 3rd.

19 But the parties were adverse to one another -- very
20 much so, I think you can imagine -- between March 15th and
21 May the 3rd, and that those documents were all prepared in
22 anticipation of litigation, and we, meaning BCB, should not be
23 compelled to, number one, do a privilege log because that will
24 take a -- a long time -- there's a lot of, I imagine, emails
25 and whatnot on that -- or produce any of its documents in that

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ARGUMENT - COLBATH

11

1 period of time.

2 So we produced everything up through and including --
3 I think it was March 7th, but then we supplemented it up
4 through March 15th. We believe that's the appropriate cutoff
5 date.

6 Thank you.

7 THE COURT: All right. Thank you, Mr. Murphy.

8 Ms. Colbath, I'll give you an opportunity to reply.

9 MS. COLBATH: So -- so we're really mixing apples --
10 the proverbial apples and oranges here.

11 Judge Johnson did not make any type of discovery --
12 he wasn't presented with a discovery dispute; he was not
13 deciding a discovery issue at the evidentiary hearing. It was
14 a very precise document that on a particular cross-examination
15 I sought to admit into evidence. It wasn't making a discovery
16 decision.

17 I would say I'm aware that -- that at certain periods
18 of time plaintiff started -- at least in one instance that I'm
19 aware of -- issued cease and desist letters to potential
20 witnesses very early on, I believe in order to chill testimony
21 and -- and comments by those witnesses.

22 Those are things that would be highly relevant to me,
23 especially as we go forward with depositions, that would
24 postdate the Chancery Court and would be highly relevant.

25 And that's just an example of something that I'm

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1 aware of that would be captured by this. That is not a
2 privileged document. I'm not asking for privileged documents
3 to be produced. If it's BCB's counsel's position that there
4 are no documents between March 15th and May 3rd other than
5 privileged documents, I'm happy to -- to suggest a
6 certification from him on that.

7 But that -- but there -- you know, I'm -- I'm fairly
8 certain, based on the discovery that I've reviewed, that there
9 are responsive documents to our document requests, and they
10 should be produced.

11 THE COURT: Thank you.

12 Hold on one moment.

13 Mr. Murphy, I'm having trouble pulling up the letter
14 that you were just referencing. Is there any way you could
15 email it again to the Court real quickly?

16 MR. MURPHY: Of course we can, Judge. I could -- at
17 least -- I can't but I'll ask Scott Murray to do that for me.

18 THE COURT: Yes.

19 MR. MURPHY: This would be our August 19 letter to
20 Your Honor -- let me just turn to Scott.

21 And, Scott, can you find that letter that we sent up?

22 We're going to get it to you one way or another.

23 THE COURT: Thank you. I know I had it but I . . .
24 I can't seem to just get it pulled up here.

25 MR. MURPHY: And all of my discussion on this is

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13

1 at pages 8 and 9 of that letter, and then, of course, it's
2 also with the -- the transcript with Judge Johnson, and that
3 is Exhibit No. 7 to the letter.

4 I -- Scott -- I misspoke, Judge. This is -- this
5 should be, I think, in my August 16th, 2024, letter to
6 Your Honor and Exhibit 7 to that letter.

7 That's what you're looking for, Scott.

8 MR. MURRAY: Okay.

9 MR. MURPHY: We'll get her.

10 THE COURT: Okay. Thank you.

11 I'm pulling it up in my email, and it's just not
12 popping up and I don't know why.

13 MR. MURPHY: I remember -- that was the 16th. That
14 was my 44th wedding anniversary Friday night, and I was here
15 working on that when I should have been home, so that's why
16 I have a memory of this.

17 THE COURT: All right.

18 MR. MURPHY: So it came to you late, around 4:50 in
19 the evening.

20 THE COURT: All right. I'm going to -- hopefully,
21 we'll get that here shortly.

22 Okay. Let's move on to the next bullet point,
23 responsive documents dated after March 7th despite claiming
24 through March 15th would be forthcoming.

25 This sounds like maybe it's somewhat related to the

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ARGUMENT - COLBATH

14

1 first topic, but, Ms. Colbath, I'll let you speak to that, as
2 well.

3 MS. COLBATH: It is, Your Honor, and this is
4 something where the plaintiff's counsel agreed to produce the
5 documents and just never did. And so we continued to press to
6 get them.

7 I would say that last night and very late on Friday
8 night the plaintiff produced to us 14,000 pages. They must --
9 I don't know, you know, where they found that volume of
10 documents recently.

11 But, in any event, we are in the process of
12 uploading -- obviously, that's a massive undertaking to review
13 that many documents. They kind of just dropped from the sky
14 on us. And so -- it could be that second bullet point is
15 included in those 14,000, but I obviously haven't had
16 sufficient time to ascertain that.

17 What I was going to suggest is that these 14,000
18 documents -- there have been outstanding requests that we've
19 written to you about, and I would ask the plaintiff to provide
20 us with something in the way of some quickie-type index. If,
21 you know, Documents March 7th to March 15th are from X to Y,
22 give us that, you know, in a short index.

23 You know, there are other categories that we're going
24 to look at. If, you know, Z to A is the third bullet point in
25 my letter, let them identify that because to just have, at

1 this point in the litigation -- they were required to do their
2 production to us back in February, and now, suddenly, massive
3 amounts of documents are appearing a week before we start
4 depositions. Very unfair.

5 I'm going to get my team together to, you know, begin
6 the review, but I think it's incumbent upon plaintiff's
7 counsel to provide us with some type of map as to what those
8 14,000 documents include and why they're appearing, you know,
9 less than 30 days before the end of discovery.

10 So back to Bullet Point 2, those are documents that
11 were previously promised, and we just had not received them by
12 the time I wrote to the Court, and I cannot confirm that we've
13 received them as of now.

14 THE COURT: All right.

15 Mr. Murphy, are those documents you believe in --
16 contained within the recent production?

17 MR. MURPHY: Yes, they are, Judge Hambrick.

18 And the only other thing I would say is this: All of
19 the supplemental productions that the MineOne defendants have
20 done, there's never even been a sentence describing what they
21 are, let alone an index. They just say "Here's Volume 15" or
22 Volume 16 or Volume 7, and we're left to discern what they
23 are.

24 And now Ms. Colbath would like me to provide the
25 index of everything in there. That would just be one-sided.

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ARGUMENT - MURPHY

16

1 They've never done it. I haven't done it, either.

2 I just produced nearly 44,000 pages over the course
3 of the case, and it's just too burdensome to go back and do an
4 index of all of that.

5 THE COURT: Okay.

6 Are there other things, Mr. Murphy, in the
7 August 14th letter that you believe have been provided in the
8 recent production that we can maybe cut to that, other items?

9 MR. MURPHY: I think I could help Your Honor cut --
10 cut to the quick on this pretty good here. I've got a little
11 one-page cheat sheet that I made for myself, so let me share
12 that with you if you don't mind.

13 THE COURT: Sure.

14 MR. MURPHY: There was an issue about whether my
15 office had provided all of the documents that we've received
16 on our third-party subpoenas.

17 And I can tell you -- and -- and counsel all know
18 this by now -- that BCB has provided all the documents our
19 office has ever received from all third-party subpoenas.

20 Check that one off.

21 THE COURT: And is that in the recent 14,000 or --
22 also?

23 MR. MURPHY: No. No. That was on a separate
24 production from my legal assistant Wendy Trembath late last
25 week. That's different than the -- than the 14,000 or --

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ARGUMENT - MURPHY

17

1 really, I thought it was a little over 13,000, but I'm not
2 going to quibble about that.

3 So that came separately to the other parties.

4 THE COURT: And do you have the date, Mr. Murphy,
5 that was provided?

6 MR. MURPHY: I'm guessing, Your Honor, but it --
7 I have a good guess. It's either last Thursday or Friday,
8 August 15 or 16. I don't remember which.

9 MS. COLBATH: It was provided Friday morning --

10 MR. MURPHY: Okay. 16th. Thank you, Paula.

11 MS. COLBATH: -- on the 16th.

12 MR. MURPHY: Yeah.

13 THE COURT: All right.

14 MS. COLBATH: If it --

15 THE COURT: Hang on. I'll come back -- I'll get you
16 in just a minute, Ms. Colbath.

17 MS. COLBATH: Okay.

18 THE COURT: I'll let you respond.

19 I just wanted to kind of lay out if there's other
20 things they're claiming you've provided, if we can -- I'll get
21 that part of Mr. Murphy's response, and then I'll give you a
22 chance to speak to it again.

23 MS. COLBATH: Okay.

24 THE COURT: All right.

25 Anything else, Mr. Murphy?

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ARGUMENT - MURPHY

18

1 MR. MURPHY: Yeah. I've got, really, six things for
2 you that I think would help.

3 The second item, Judge Hambrick, is that they have
4 been wanting BCB's text messages. And BCB has provided over
5 1,000 individual text messages, and it provided these on
6 Friday, August 16th of 2024.

7 And then I'm ready to go to the next item when you're
8 ready.

9 THE COURT: Yeah. Go ahead.

10 MR. MURPHY: The third item are the WhatsApp
11 messages. I'm not a WhatsApp guy, but apparently younger
12 folks are. And I can share with you that BCB has provided
13 over 3,000 individual WhatsApp messages, which is --

14 THE COURT: Is that -- Mr. Murphy, is that WhatsApp
15 or WeChat?

16 MR. MURPHY: Man, I have messed that up so much.
17 It's WhatsApp.

18 THE COURT: Okay.

19 MR. MURPHY: And it's funny because my oldest son had
20 to correct me on this last night. But WhatsApp is one word.
21 I always capitalize the A.

22 But -- others don't but -- so BCB has provided over
23 3,000 individual WhatsApp messages. It first provided them on
24 July 26th of 2024, and then we later provided it on the
25 Relativity load file on August 26th of 2024.

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ARGUMENT - MURPHY

19

1 So they should -- the -- the defendants should have
2 them in the format that they request.

3 THE COURT: Okay.

4 MR. MURPHY: So that's the WhatsApp.

5 And if I could turn to the Skype messages that they
6 asked for, also, I can share with you that BCB did not use
7 Skype to communicate on the project. It has no Skype messages
8 to produce.

9 We know that the Defendant MineOne folks did, and we
10 had -- we've had the big discovery arguments with Judge Carman
11 over that, but BCB does not have any to produce.

12 And then to the fifth item, what you call the WeChat
13 messages -- again, that's one word, "WeChat" -- BCB did not
14 use WeChat to communicate on the project, and it has no WeChat
15 messages to produce.

16 THE COURT: Okay.

17 MR. MURPHY: All right?

18 And then my last item -- and I think we've talked
19 about it a little bit -- on the email messages. I can tell
20 you that BCB has produced over 13,000 emails and attachments
21 consisting of over 44,000 pages, and that's based on our
22 May 2024 and August 2024 productions. And I think -- and
23 this -- the more recent one of approximately 14,000 is the
24 August of '24 production.

25 And, finally, BCB has been diligently working with

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ARGUMENT - COLBATH

20

1 its Relativity provider to do a supplemental production this
2 week to provide roughly 2,000 additional emails, most of which
3 are between BCB and MineOne's vendors and counterparties.
4 That's just more of a heads-up for the Court and counsel.

5 THE COURT: And those are coming this week, you said,
6 Mr. Murphy?

7 MR. MURPHY: Yes. We're trying to kick those out
8 this week.

9 So there we just covered the third-party subpoenas,
10 text messages, WhatsApp, Skype, WeChat, and emails. I hope
11 that was helpful.

12 THE COURT: Let me look over here.

13 All right. Ms. Colbath, let's start with the --
14 well, your third bullet point has text messages.

15 MS. COLBATH: Might I address the subpoenas first,
16 Your Honor, just so that we don't move on from something that
17 there might be an -- still an open issue?

18 THE COURT: Sure.

19 MS. COLBATH: So on Friday BCB's counsel produced to
20 us documents from two parties, an entity called CEGEN and an
21 entity called Black Hills Energy.

22 Plaintiff's counsel has issued over 21 subpoenas, and
23 I want to make sure that either they withdrew all their
24 subpoenas or what the status is because they've been
25 outstanding for months and it's quite surprising that they

1 issued 21 separate subpoenas and they've only produced to us
2 documents from 2 parties.

3 So if I could get clarity whether those subpoenas
4 were withdrawn.

5 THE COURT: All right.

6 Mr. Murphy, can you speak to the other subpoenas that
7 you issued and any documents?

8 MR. MURPHY: I can.

9 If we have not provided Paula's office by last
10 Thursday or Friday with them, we did not get any subpoenas.

11 What we did early in the case, back in -- in
12 December of last year, Judge Hambrick, is we did issue a lot
13 of subpoenas to third parties and got a slug of objections,
14 not only from MineOne but from those other parties. Nearly
15 all of the subpoenas that I've served have just been objected
16 to with no documents.

17 As an officer of the Court, I'm representing to you
18 that whatever documents we received from any third-party
19 subpoena have been provided now to all counsel.

20 THE COURT: All right.

21 MS. COLBATH: Okay. And then on the text messages,
22 if we could have Mr. Murphy identify whose phones were
23 searched.

24 Because a cursory review of what was produced seems
25 to indicate that only Michael Murphy's phone was searched,

1 and, obviously, there are other principals and other relevant
2 parties that would need to be searched, as well. They had
3 different responsibilities.

4 So if he could identify whose phones were searched
5 and who did the search.

6 MR. MURPHY: Boy -- I'll just wait.

7 THE COURT: Yeah. Give me a minute, Mr. Murphy. I'm
8 trying to take good notes, which I struggle with sometimes,
9 so . . .

10 Ms. Colbath, let me ask you a question.

11 In terms of -- I know you haven't had them very long,
12 the text messages.

13 MS. COLBATH: That's right.

14 THE COURT: In looking through them, is it just
15 page after page of text messages? There isn't any . . .

16 MS. COLBATH: You know, Your Honor, I didn't --
17 I didn't put my eyes on them. They were just uploaded this
18 morning by our database technology folks. However, what --
19 what was becoming apparent was that not all phones were
20 searched.

21 On the WeChat, BCB's counsel said that there were
22 none on the project. They hired a gentleman by the name of
23 Steve Randall, who did actually use WeChats, so it's clear to
24 me that a good faith search hasn't been done for WeChats. And
25 I don't think all phones were checked for text messages and --

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ARGUMENT - COLBATH

23

1 and imaged and searched.

2 But, you know, I'm sure BCB's counsel will let us
3 know what they did in terms of -- you know, we -- we have
4 three principals, just like BCB. We had all of their phones
5 imaged by a professional vendor, searched, and -- and, you
6 know, we've produced significantly more documents.

7 And so we just want to make sure that we don't move
8 on unless all phones were searched. We --

9 THE COURT: All right.

10 MS. COLBATH: -- we've undertaken it and -- again, in
11 fairness, it took BCB a very, very long time. We've been more
12 than patient. We're -- really have our backs against the wall
13 with regard to depositions, and now we're getting, you know,
14 massive document productions.

15 And I don't want to -- there to be any further lag,
16 especially on things like text messages, which tend to be more
17 revealing than, you know, a -- a memo that someone prepared or
18 an invoice. A lot of these communications were -- were done
19 throughout the project by text messages, and we want to make
20 sure we have a complete set of those.

21 THE COURT: All right.

22 Mr. Murphy, I'll let you address --

23 MR. MURPHY: You bet.

24 THE COURT: -- that specific part of that request.

25 MR. MURPHY: Judge Hambrick, they do have a complete

1 set of these. And what we're seeing here is just classic
2 projection.

3 When the MineOne defendants -- when I asked them for
4 their WeChat and their text messages, they never told me who
5 the custodians were that they searched. The only custodian
6 that we were able to identify that anything came from was a
7 midlevel employee from MineOne. Her name is Haku Du. They
8 didn't produce any of their messaging from any of their
9 higher-up people at all, and that's actually the --
10 the subject of the first motion for sanctions back on
11 July the 10th.

12 They have never -- so here they are now, without any
13 interrogatory, asking us to tell you who the custodians were
14 that we searched, but they have not done the same thing for us
15 in our first and original request to them. All they produced
16 was from one custodian, Haku Du.

17 And -- and that -- but what about Jiaming Li? We
18 don't have anything from him. And they say that, "Oh, he's --
19 his phone" -- now, the Skype messages, they did give us some
20 custodians on that but not on the WeChat, not on the text, as
I understand it.

22 And if this had to be --

23 ELECTRONIC VOICE: Recording stopped.

24 MR. MURPHY: -- some kind of -- I'm sorry. Did --
25 Paula, did you want to interrupt me?

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ARGUMENT - MURPHY

25

1 (No response.)

2 MR. MURPHY: Okay.

3 What should happen -- what should have happened here
4 is, if they wanted to know all the details of a particular
5 search, they should send written discovery requests for those
6 instead of coming to Your Honor today and just say, "Well,
7 have Mr. Murphy tell us all about his searches," even though
8 they haven't done any kind of a request for that. That's how
9 this should be handled.

10 ELECTRONIC VOICE: Recording in progress.

11 MR. MURPHY: So it -- it --

12 THE COURT: Hold -- hold on a minute, Mr. Murphy. We
13 had a -- hold on one second.

14 I'm sorry. We had a technology thing. I don't know
15 if you guys didn't notice it, but my whole Zoom meeting froze
16 for about the last minute.

17 MR. GOTTLIEB: We heard the recording went off.

18 That's all we heard.

19 THE COURT: Okay. Well, that's when -- I don't know
20 what was said after the recording went off.

21 So I apologize, Mr. Murphy. You were responding to
22 their request. You'd stated they -- you got the name of one
23 middle-level person from MineOne as the custodian, and
24 I didn't hear much after that. So if you wouldn't mind
25 backing up.

1 I hope -- I hope this doesn't happen again. But if
2 you get notice that the recording goes off, just wait for it
3 to come back on.

4 So hopefully -- yeah. So -- sorry about that.

5 MR. MURPHY: No worries, Judge. I'll just try to
6 summarize it quickly.

7 What I shared with you is that we have made that full
8 production to them of -- of all of our text messages, but
9 they're not satisfied with that. They say, "Well, now we want
10 Judge Hambrick to order you, Mr. Murphy, to tell us who were
11 all the custodians you did; what did you do to do it, to pull
12 them; did you hire a vendor like we hired to pull all of those
13 things."

14 They have a lot of good deposition questions that
15 they can ask my oldest son, Michael Murphy, about, whose job
16 most of this -- it fell on his shoulders to do that, but these
17 are good -- these are questions they should ask him in his
18 deposition. That's not something I should have to supplement
19 all of this discovery with.

20 I've told you that we've produced all of those
21 materials, and that should be good enough, and I shouldn't
22 have to do some supplemental verification or certification
23 because, Lord knows, Ms. Colbath never did that on any of her
24 scant production.

25 And I'm not asking her to do it. I'm just saying

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ARGUMENT - COLBATH

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1 I shouldn't have to do it, either.

2 Thank you, Your Honor.

3 THE COURT: All right.

4 Ms. Colbath, I'll give you another opportunity to
5 reply --

6 MS. COLBATH: Sure. I --

7 THE COURT: -- on the issue in terms of the
8 custodians and the -- that information.

9 MS. COLBATH: Yeah. I -- the question -- I didn't
10 realize it was going to elicit such a -- such a strong
11 reaction.

12 We've had represented to us today in -- in this
13 hearing that all text messages were produced by BCB, an LLC.
14 And BCB is made up of a number of team -- Mr. Michael Murphy
15 calls them at the -- at the evidentiary hearing a team; he
16 calls a dozen -- includes about a dozen individuals. That's
17 evidentiary hearing page 41.

18 We know the team is made up of Michael -- at least
19 Michael Murphy, Sean Murphy, Emory Patterson, Neil Phippen,
20 Steve Randall, and probably some other people.

21 And I'm just simply asking Mr. -- BCB's counsel to
22 identify, when you collected text messages, whose phones did
23 you collect them from. It needs to be from each of those
24 individuals, as a starting point.

25 This isn't about -- we've already gone before Judge

1 Rankin. I've done 18 separate productions. We've fully
2 complied. And -- and so the issue here isn't what -- what we
3 produced. The question today I wrote because I haven't gotten
4 a good faith production.

5 And so it's very simple: Please identify which
6 custodians you went and collected text messages, WhatsApp,
7 Skype, WeChat, Zoom, and emails from because all of those
8 individuals are custodians of BCB; they all had different
9 responsibilities.

10 Michael Murphy wasn't the sole person who was talking
11 with every vendor. And so -- Sean Murphy was talking to
12 people; Emory Patterson was talking to other people. And all
13 of them need to be searched and produced.

14 And so, again, it's a simple question to BCB's
15 counsel: What custodians did you search and how did you go
16 about collecting the documents?

17 THE COURT: Okay.

18 MR. MURPHY: Judge Hambrick, just a final thought on
19 that?

20 If -- if I said that we produced all of our text
21 messages, that may be an overstatement, and I want to walk
22 that back.

23 I can't knowingly represent that to the Court.
24 I may -- I know that my client has done a good faith effort to
25 get them, but I don't know if all of them have been produced.

1 So I -- I just wanted to share that with you and -- and
2 counsel.

3 THE COURT: Understood.

4 Okay. Let's go to the fourth bullet point. These
5 are documents regarding BCB's capitalization and funding.

6 Ms. Colbath, I will let you speak to this item.

7 MS. COLBATH: Okay. So the investors in BCB are very
8 key witnesses for us. The -- BCB raised millions and millions
9 of dollars, and, as far as my clients can tell, they didn't
10 invest anything into the project. They raised millions and
11 millions of dollars, and we want to know what they told
12 investors about the project.

13 Obviously, there's a contract that had milestones in
14 it that were not met, and this case is who breached the
15 contract first. And so, before that contract was entered
16 into, the -- numerous investors were approached, and we want
17 to know what they were told about the project, what they were
18 told about construction costs.

19 This was a project that had serious time line delays,
20 cost overruns, and we want to -- we want to know what these
21 investors were told. We want to know what they were told
22 about the status along the way. Was BCB acknowledging that it
23 was having problems? Was it blaming it on vendors? What were
24 these investors being told?

25 They ponied up significant money, and, as best we can

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ARGUMENT - COLBATH

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1 tell -- again, we don't know how the money was used. We don't
2 believe it was put into the project.

3 As problems were encountered, were the investors --
4 what were the investors told? They clearly wanted to know
5 what was happening with their money. What were they told in
6 terms of a return on investment? Is that return on investment
7 consistent with what now BCB claims its damages are?

8 It -- it appears -- now, this was accred- -- it looks
9 like -- an accredited investor capital raise, yet we have not
10 seen anything in the way of a private placement memorandum,
11 which would have been required by various SEC rules. So maybe
12 this was done verbally, which is why we want to talk to the
13 investors.

14 Late in the day -- just for a little bit of a
15 time line for Your Honor, the project was supposed to be done
16 and up and running by October 31, 2022. That day came and
17 went. November came and went. December came and went.
18 BCB walks off the job in March of 2023 and, within a few days,
19 has filed their 244-paragraph, 40 -- like a huge complaint in
20 court.

21 And right before they run to court, suddenly all the
22 money gets returned for reasons which are -- Mr. Murphy tries
23 to explain, but I don't -- can't put him on the stand in
24 January of 2025. I want to see the documents. I want to see
25 the communications relating to the return of the money, which

1 made BCB judgment proof.

2 And, at the time of the attachment hearing, their
3 papers are replete with them telling the Court "We have no
4 money; we're not going to be able to post a bond more than a
5 thousand dollars," yet they had \$3 million, if not more.

6 And so those investors obviously were told what they
7 were investing in, and we want -- we want to see that. We
8 want to see whether what BCB was telling its investors was the
9 same as it was telling my client when it came to Wyoming in
10 early 2022.

11 THE COURT: Well, Ms. Colbath, let me interrupt you
12 just briefly.

13 So this goes along with the subpoena issue that --

14 MS. COLBATH: Correct.

15 THE COURT: -- that Mr. Murphy mentioned?

16 MS. COLBATH: Correct.

17 THE COURT: Okay.

18 MS. COLBATH: Correct.

19 Now, BCB has some international investors. They have
20 investors from Portugal and Japan. And, at some point,
21 because there was foreign ownership in this project, what's
22 called the Committee on Foreign Investment in the
23 United States was tipped off and started an investigation,
24 which ultimately led to a Presidential order that the MineOne
25 defendants needed to divest themselves of the property. But

1 prior to my clients owning the -- buying the property, BCB had
2 a contract to acquire the land, and they had foreign
3 investors.

4 And so we want to know if they went to CFIUS -- the
5 Committee on Foreign Investment -- did they have discussions
6 with their investors in Portugal and Japan about their -- the
7 foreign ownership, and -- and whether they -- this issue was
8 on their radar screen.

9 There's also an issue that has percolated regarding
10 how parties have logged and -- and accounted for investments.
11 And this was a centerpiece of the attachment hearing.

12 Mr. -- BCB's witness testified that loans that came
13 in to save this project -- that my client went and obtained --
14 they claimed were really camouflaged equity. And so they have
15 made this a big argument, and we want to see the monies that
16 BCB collected. Did they characterize them as equity, or did
17 they characterize them as loans?

18 Mr. Michael Murphy, Mr. Murphy's son, testified very
19 emotionally at the evidentiary hearing at the beginning that
20 he is absolutely all in, his entire life savings is wrapped up
21 in this case, the same with the team members that he has,
22 their families and young children.

23 And so if you are testifying that everything you
24 absolutely own is wrapped up in this and you put your life
25 savings as well as 12 other people, team members, we're --

1 we're entitled to test that. You testified under oath on
2 June 26th. And we -- we don't have to take Mr. Murphy's
3 detailed letters. We're entitled to the underlying documents.
4 We're entitled to talk to these individuals themselves who
5 invested their money. "What were you told?"

6 There should be a private placement memorandum here.
7 There's not. So -- so we do have to rely on testimony.

8 Mr. Murphy says, "Well, you can't -- this is like a
9 shareholder in a corporation. You can't just go take the --
10 the testimony and request documents from a shareholder." This
11 is not like that at all. This is a closely held LLC that was
12 formed for the sole purpose, as best we can tell, to build
13 this facility in Cheyenne, Wyoming.

14 And so we have -- we have identified -- and there's a
15 long list. We've tried to -- we know some people were more
16 involved than others. We -- we subpoenaed a gentleman by the
17 name of Bryce Fincham. We know that Bryce --

18 THE COURT: Ms. Colbath, I'm going to interrupt you
19 on this issue, and, Mr. Murphy, I'm not going to give you a
20 chance to respond because I -- we're going to do something
21 else on this issue. I think it needs further briefing. And
22 so --

23 MS. COLBATH: Sure. Sure.

24 THE COURT: -- I'm not going to decide that issue
25 today, and so I don't know if we need to keep discussing it.

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ARGUMENT - COLBATH

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1 I know that --

2 MS. COLBATH: Thank you, Your Honor.

3 THE COURT: -- a lot of this information is in the
4 motion that you filed last night and . . . so I'm not going to
5 decide that issue today, so I'm going to just sort of cut you
6 off on that one.

7 MS. COLBATH: No worries. Thank you.

8 THE COURT: Since it is related, I know we're going
9 to get to that eventually on the -- when we get to the
10 August 12th letter. So we'll leave that and we'll come back
11 to that issue and what the Court wants to do with that issue
12 in just a moment.

13 I want to just talk quickly about the -- the
14 privilege log issue, Ms. Colbath. What -- did you want to
15 address that?

16 MS. COLBATH: Yeah. Sure.

17 So -- so -- you know, mid-March BCB files its first
18 complaint in Chancery Court -- and, again, this wasn't, you
19 know, a noticed pleading. This goes on for hundreds and
20 hundreds -- like probably 250 paragraphs. I mean, talking
21 about things like, "Okay. The BMW drove up to the site and --
22 and it's a 535 and a BMW of that type costs 170,000" --
23 I mean, that's the level -- that's actually an allegation.
24 It goes on and on and on.

25 And the first entry in the privilege log is dated

1 March 4th, and there is just no conceivable way -- I've been
2 practicing for 30 years -- that a complaint of that detail and
3 heft was prepared overnight.

4 And part of our position here is that BC- -- we know
5 that BCB surreptitiously taped a call in early March because
6 they produced a copy of it, a Zoom meeting. And they were --
7 you know, in retrospect, when I look at it, you know, if I had
8 been present, I would have thought, "Okay. These guys are
9 setting, you know, things up." It's a 50-minute call that
10 they taped with no notice to folks. They were already in
11 litigation mode. I think that call was March 7th.

12 And it's clear to us that the complaint -- they
13 were -- they were putting together time lines; they were
14 beginning their lawsuit. Because what happened here is in
15 December of 2022 my client brought in someone who really
16 builds facilities of this magnitude to say "Could you give an
17 eyeball and -- are we really going to be -- can -- they're
18 telling us 30 days. Are we going to get there?" Because
19 these were 10 separate buildings called MDCs, data centers.

20 And so we know that there are documents before
21 March 4th, and they haven't logged them. And we want to show
22 that they were planning this lawsuit and setting things up
23 back -- December, January, February.

24 For instance, February, if we hadn't pressed, we
25 would have never known that they gutted all their bank

1 accounts and reduced them to like pennies, if we hadn't
2 pressed on this. So they were already taking action in
3 anticipation of counterclaims and rushing to the courthouse.

4 And, again, on this one, if Mr. Murphy wants to
5 submit a certification that there is not one document before
6 March 4 relating to this project, I'll take it.

7 THE COURT: All right.

8 Mr. Murphy, do you want to respond?

9 MR. MURPHY: I do, Your Honor.

10 All of that is speculation by Ms. Colbath. She's
11 always been amazed in this case at how quickly my sons and
12 I could pull this lawsuit together and get it drafted and
13 filed in the Chancery Court. She's just never believed it,
14 and there's no -- there's no telling her -- I can't tell her
15 how many times that it didn't happen and it doesn't matter.
16 She keeps saying it.

17 We did produce the only really full privilege log in
18 the case among all of the parties. The first entry is on
19 March 4th because I didn't represent BCB before that date.

20 Remember, this is a privilege log. It's not a log of
21 all the things that happened on the site by all the people
22 that were on the site. It's the -- it's a log of the
23 privileged communications between me and Scott Murray and the
24 BCB principals, and it extends, I think, for the better part
25 of a year. It's 107 pages long and -- but she just won't

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ARGUMENT - COLBATH

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1 accept that. And that's what it is.

2 And it's full; it's complete. I attached that to my
3 letter -- which, by the way, is in Your Honor's inbox now.

4 It -- the privilege log we produced -- my goodness.
5 It was a hundred -- I think it was 107 or 110 pages. But --
6 we produced it as Exhibit 6 or 7, I think. But you can see
7 how thorough it is. She just will not accept the notion that
8 there weren't privileged communications before March 6th when
9 I started my privilege log.

10 Why should I have to certify to her beyond what is on
11 my privilege log of the lack of communications with counsel
12 before that? I've never had anyone do that or even ask for
13 that before.

14 That's the log -- the log is my representation of
15 what the privileged communications are. I didn't ask her
16 for -- for her to certify anything about her privilege log,
17 but she wants me to make some -- some kind of certification
18 about my log.

19 It's over the top, it's unnecessary, and it just
20 speaks to her unwillingness to believe anything that I say.

21 THE COURT: Ms. Colbath, I'll let you reply.

22 MS. COLBATH: Yeah.

23 So -- so the complaint was not dictated in final.
24 Okay? You could take a look at it, and it was not dictated in
25 final.

1 There was a draft or a time line, and that would
2 exist if -- then the document -- you're saying that the --
3 that you -- your representation started on March 4th. But the
4 creation of that complaint clearly started before that, and
5 it's not a privileged document. It should be produced.
6 There's not one item on the privilege log about a draft
7 complaint. It was not dictated in final.

8 And -- and so, you know, you -- you -- you try to
9 project and -- and take issue -- you have no issues with our
10 privilege log. You have not raised any issues. I'm raising
11 that we believe, based on the facts, the circumstantial facts,
12 that there had to be documents before March 4th.

13 And -- and if -- if -- if there's none, I don't
14 understand why a simple certification doesn't just shut this
15 down.

16 THE COURT: All right.

17 MR. MURPHY: The last thing, Your Honor, is --

18 THE COURT: No. I don't need -- I don't need to hear
19 from you again on that issue.

20 All right. Next, I want to go to the final bullet
21 point about the request for proposal submitted by BCB to
22 Black Hills Energy.

23 Ms. Colbath, do you want to be heard on that topic?

24 MS. COLBATH: Sure.

25 So -- so the -- this case is one about who breached

1 first, and it's BCB's position that in early 2022 they won a
2 valuable contract from Black Hills. And if you look and read
3 the evidentiary transcript, Judge Johnson talks about that
4 this was, you know, something very valuable that they
5 obtained.

6 Obviously, it's my client's position that they
7 obtained it because they were the party that agreed to pay the
8 highest price for electricity and, when you build a facility
9 like this, you need low, low, low electricity costs and that
10 that contract wasn't really worth what they tout it to be, but
11 that will be -- that's for trial.

12 What I want is I want their proposal that they
13 submitted to Black Hills Energy that won them this contract.
14 I want to see what they submitted. I want -- to the extent
15 they have proposals submitted by Amazon, Microsoft -- there
16 were a number of companies that bid, but they didn't bid to
17 pay anything close to the electrical rate of BCB, and that's
18 why they got the contract.

19 So I want their proposal. I want to see what they
20 submitted to win this contract. I mean, it's -- it --

21 THE COURT: Ms. Colbath, what is -- I mean, you have
22 the -- you have the actual contract; correct? That they --

23 MS. COLBATH: I have the contract.

24 THE COURT: What difference does it make to the case
25 what went on in negotiating that contract? I don't understand

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ARGUMENT - COLBATH

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1 this point of it.

2 MS. COLBATH: Because I want to be able to show that
3 they won this contract because they agreed to pay not the --
4 they agreed to pay the highest electrical price and that all
5 the other bidders had -- they -- they would only accept the
6 contract if it was significantly lower.

7 Within days of them winning the contract, my clients
8 went in and renegotiated with Black Hills.

9 And so I want to see what they promised Black Hills
10 in terms of pricing, in terms of usage. These were supposed
11 to -- they -- in their damages they claim that there was
12 supposed to be expansions to the -- there were two sites in
13 Cheyenne, North Range and Campstool. I want to see whether
14 their proposal even asked or -- or bid on the expansions
15 because they're seeking damages on expansions that never took
16 place.

17 THE COURT: But isn't the final terms in the contract
18 that you have that they actually came to?

19 MS. COLBATH: No. No. Because I want to know what
20 promises BCB made to Black Hills in order to secure the
21 contract.

22 The contract is -- is not -- so -- so all the other
23 bidders, Your Honor, bid much lower. And BCB is taking the
24 position that what they -- their proposal was so fantastic
25 that they won this beautiful contract. And I want to show

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ARGUMENT - COLBATH

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1 that what their proposal was was nothing that anyone like --
2 that would run a cryptocurrency would have ever submitted.
3 I mean, it's how they secured the contract.

4 So if they misled Black Hills and made all kinds of
5 like crazy promises, I'm entitled to know that they misled
6 Black Hills in order to get the contract. I mean, there's a
7 variety of ways that their proposal is -- is relevant.

8 Maybe they promised things that BCB, as a start-up,
9 could have never delivered on, so they had no choice but to
10 contract with my client, who had money.

11 I mean --

12 THE COURT: So there are things -- binding things in
13 the proposal that are not in the final contract?

14 MS. COLBATH: Of course. I -- I know that the
15 proposal was much more expansive than the ultimate contract.

16 And it -- you know, to the extent they -- they made
17 promises to Black Hills on -- that they had the financial
18 wherewithal to do certain things -- I mean, I don't know.
19 Maybe they said they had the financial wherewithal to build a
20 45-megawatt cryptocurrency.

21 If they said that in their proposal, I would very
22 much like to confront Michael Murphy with that at his
23 deposition because they didn't have -- they didn't have the
24 financial wherewithal, they didn't have the manpower, they
25 didn't have the technical knowledge. And so I want to see

1 what they represented to Black Hills Energy in order to win
2 this contract over other bidders.

3 THE COURT: All right.

4 Mr. Murphy, do you want to address that?

5 MR. MURPHY: I do, Your Honor. Thank you.

6 First of all, Black Hills Energy didn't tell anyone
7 what the other parties did or what they bid. All of this talk
8 from Ms. Colbath about what other people did with their
9 requests for proposals to Black Hills Energy is nonexistent
10 because Black Hills Energy wouldn't do it.

11 I -- I sent a subpoena to Black Hills Energy for
12 these requests for proposals. They totally objected, said
13 it's all highly confidential information, and -- and would not
14 produce any of them.

15 And just by way of background, in December of 2023
16 MineOne's RFP No. 14 did seek all the documents and
17 communications concerning the requests for proposal submitted
18 by BCB to Black Hills Energy.

19 And in the next month, January of '24, BCB objected
20 to this request on the ground that it was vague, it's
21 ambiguous, it's overly broad, it's not stated with reasonable
22 particularity, unduly burdensome, and especially not
23 relevant -- and this is the key part -- to any party's claims
24 or defenses.

25 And it is not limited temporally, and it's just not

1 proportional to the needs of the case. The plaintiff further
2 objects to this request to the extent that it -- it seeks
3 commercially sensitive and confidential information, which has
4 been Black Hills Energy's position.

5 And last Friday night, when I was here at the office,
6 they gave notice of a subpoena to Black Hills Energy for this
7 very document. I haven't talked to Black Hills Energy, but
8 I can -- I can tell you that -- I can -- I can guess, from
9 having earlier visited with them, they're going to object to
10 producing any of the requests for proposals.

11 BCB did not hear from MineOne regarding this, its
12 objection, until the August 12th letter, six months after they
13 made this request for production, when Mr. Inman, who's on our
14 call, said these documents are undeniably relevant. But,
15 first and foremost, BCB has not had a meet and confer with
16 Paula Colbath on this issue, and the issue is not even ripe
17 for today.

18 Secondly, given that the defendants have prematurely
19 raised this issue with Your Honor, I've been forced to
20 respond, obviously.

21 And throughout this litigation BCB has, indeed, noted
22 the value of the BCB-Black Hills Energy-BCIS agreement -- in
23 other words, the power contract that you talked about -- and
24 BCB has rightfully done so because it was the most important
25 and valuable asset it provided to MineOne, which it assigned

1 to MineOne for MineOne's promise to pay BCB for it in Phase 2
2 of the project, a promise we all know MineOne never honored.

3 The value of the power contract is based upon the
4 power contract itself. It is not based on the, quote,
5 "documents and communications concerning the request for
6 proposal submitted to -- by BCB to Black Hills Energy."

7 This is a giant fishing expedition. How many times
8 today I've already heard Ms. Colbath say "I want to see;
9 I want to see; I want to see; I want to see." She has a great
10 wish list and a long list of things she wishes to see, but
11 they're all fishing expeditions.

12 Those documents and communications that she's asking
13 for led to months of meetings, emails, and negotiations
14 between BCB and Black Hills Energy over which time many of the
15 proposed ideas and terms evolved, and it first culminated in
16 the February 22, 2022, power contract and later culminated in
17 the June 9th, 2022, power contract, which was the document
18 that was ultimately assigned to MineOne Wyoming Data Center.

19 In other words, BCB's request for proposal submission
20 was simply its foot in the door to prive up -- to provide it
21 the opportunity over the next nine months to discuss,
22 negotiate, sign, and eventually amend the power contract.

23 And the value of the power contract is evident and
24 calculable based on the words in the contract, not on all the
25 activities and -- like the request for proposal submission --

1 that led up to the power contract.

2 And, furthermore, the RFP submission, which was made
3 way back in September of 2021, took place six months before
4 anyone with BCB had ever even heard of MineOne, and, as such,
5 it's outside the scope of the allowable discovery.

6 Thank you, Your Honor.

7 THE COURT: Thank you.

8 Ms. Colbath, do you want to reply to that?

9 MS. COLBATH: I defer to other counsel on here as to
10 this particular document.

11 I don't know if you want to weigh in, Marc, on this.

12 MR. GOTTLIEB: I'm not -- I'm not sure I have
13 anything to add to what you've already added on this.

14 MS. COLBATH: I mean, obviously, the document that
15 BCB submitted to secure the contract -- where it was making
16 representations, making promises to Black Hills in order to
17 secure the contract -- is highly relevant.

18 I -- I think there was probably a lot of puffery
19 going on -- going on in their request for proposal. And
20 that's part of -- you know, when they -- when they met my
21 clients, I mean, we -- we asked them for their CVs; we asked
22 for background information. And, when we look today at what
23 they submitted based on, you know, how things unfolded, you
24 know, they definitely oversold themselves.

25 And to the extent that that was part of how they

1 secured the Black Hills contract, by overstating their
2 abilities financially, technical, that is highly relevant to
3 our presentation at trial.

4 MR. GOTTLIEB: I -- I do agree with that, that all
5 those issues are relevant.

6 If -- if I may be heard very briefly on this, Judge
7 Hambrick, I don't really --

8 THE COURT: Yes.

9 MR. GOTTLIEB: I'm not -- I don't have a lot of skin
10 in this game because we didn't put in any -- any opposition
11 here, but I will say this: In terms of fishing expeditions,
12 plaintiff has gone -- plaintiff is fishing all day long.

13 I mean, I just got 200 requests for admission and --
14 and 30 interrogatories the other day on the eve of -- of us
15 going to depositions. And most of those are -- are broad
16 fishing expeditions, which will be the subject of future
17 requests -- future meet and confers.

18 But I do believe that both sides are looking for a
19 lot of information in this case, and I think it's been
20 disproportionate all the way around. And I think that -- what
21 plaintiff is seeking has gone so far above what I would think
22 is fair in this case, so I think that the things that Loeb &
23 Loeb is looking for falls right within the types of things
24 that plaintiff's been looking for, what's good for the goose
25 kind of thing.

1 THE COURT: All right. Thank you. And,
2 Mr. Gottlieb, I don't mean to have left you out of -- of these
3 issues.

4 Are there any other issues we've discussed you wanted
5 to weigh in on?

6 MS. COLBATH: Marc, I think that was directed to you.

7 Wasn't it? Or --

8 THE COURT: Yes.

9 Mr. Gottlieb, I didn't mean to have been leaving you
10 out of these discussions.

11 Were there any of the other points you wanted to
12 weigh in on that would --

13 MR. GOTTLIEB: Oh, I thought that was to somebody
14 else. I apologize, Your Honor.

15 THE COURT: It's okay.

16 MR. GOTTLIEB: No. I think that -- I support
17 everything Ms. Colbath has said. I -- I really believe that
18 her position is the right position on these things.

19 I think that she's been trying -- we've been -- the
20 defendants have been trying to get a lot of the materials that
21 have just been -- not been forthcoming. And it seems like
22 we're always fighting a battle that what we want is too much
23 but what we try to prevent the plaintiff from getting is -- is
24 not fair.

25 That's all I'll add to this whole thing.

1 THE COURT: Thank you.

2 All right. I think that that covers all our bullet
3 points in the 14th letter.

4 Ms. Colbath, would you agree? We've discussed them
5 all?

6 MS. COLBATH: Yes, Your Honor. I appreciate your
7 time.

8 THE COURT: All right.

9 Okay. So I'm just glancing at Judge Rankin's order.

10 Okay. I'm going to rule on a few of these things
11 today, and then I think that further briefing is appropriate
12 on a couple of these issues.

13 All right. I -- as to the first bullet point, the
14 documents between March 15th and May 3rd, I believe those have
15 been ordered to be produced, and so I will order production of
16 those documents.

17 And, obviously, Mr. Murphy, you can provide a
18 privilege log to any documents that you feel fall within a
19 privilege between those dates.

20 Mr. Murphy's represented they have now provided the
21 documents for Bullet Point 2 as well as the text messages,
22 WeChat. At this point I will go with Mr. Murphy's
23 representations those have now been provided.

24 I'm going to skip the next bullet point.

25 I think we've addressed the documents to third-party

1 subpoenas. Mr. Murphy represented they've provided
2 everything. If there's no production, then they didn't
3 receive anything. And at this point I think that Mr. Murphy's
4 aware of his ethical duties to the Court, and so, unless
5 something is shown otherwise, I think his representations in
6 court are sufficient.

7 And as well as the privilege log. Again, at this
8 point in time, the Court will assume that Mr. Murphy's duty of
9 candor to the Court he's complying with and that there is
10 nothing to provide before March 4th.

11 In terms of the next bullet point regarding
12 custodians and search terms, Mr. Murphy, I am going to order
13 that you supply a list just of whose information you got in
14 terms of the various different ways that -- WhatsApp,
15 WeChat -- just a list of whose messages were provided.

16 That goes for WeChat, WhatsApp, Skype -- which I know
17 you said there weren't any Skype -- text messages, those kind
18 of things. Just provide a list of who all's were provided.

19 So when we go to the August 12th -- the issue of the
20 subpoenas that were issued to third-party individuals -- which
21 would include the -- the three notice of intent from
22 August 1st and, I believe, the three more recent as well as
23 the documents -- the fourth bullet point regarding the
24 capitalization and funding, I think those are all related and
25 the last bullet point regarding the request for proposal.

1 I think those are the issues we need further briefing on.

2 So, Mr. Murphy, I know your motion was primarily
3 focused on the subpoenas that were issued. Would you need
4 additional -- I'm trying to figure out who to have -- right?
5 You've started to address this issue.

6 I don't know if we added in the -- the documents
7 regarding the capitalization and funding -- I'm assuming those
8 are separate documents -- Ms. Colbath, I'll ask you.

9 Those are separate documents from the request for
10 production with the six subpoenas; correct?

11 MS. COLBATH: Yeah. The --

12 THE COURT: Would those be BCB --

13 MS. COLBATH: Your Honor, the subpoenas had six
14 categories of documents, which included investment-type
15 information. So I think BCB's counsel's motion covers it.
16 And we'd be prepared to put in our opposition on a date that
17 you select.

18 THE COURT: All right. Then I go --

19 MS. COLBATH: Then I do have two other points that --
20 from -- from when you went through your recitation that
21 I wanted to address.

22 THE COURT: All right. Hang on one minute.

23 So, Mr. Murphy, do you believe you need to -- to
24 supplement your motion if we add in the documents that are
25 requested along with those subpoenas about funding and

1 capitalization?

2 MR. MURPHY: You're right. Let me try to summarize
3 it.

4 I thought that was the big point for today's
5 conference, honestly, it was the three subpoenas that they
6 served on the passive investors back on August the 5th and my
7 objections to those and Paula and my agreement to have
8 Your Honor rule on that. I -- I thought that was the big
9 issue.

10 The second issue -- I thought is very closely related
11 to that -- is their request for all of the financial docu- --
12 financial information and documentation. I briefed that
13 pretty hard, too, in my letter to Your Honor.

14 To me, those are very closely connected issues, and
15 they should be ruled upon -- considered and ruled upon at one
16 time, I believe. And I think that, if we need briefing, we
17 need, really, briefing on both those together.

18 The other thing -- gosh, there was so much I had in
19 my letter I thought we'd get to today but apparently we won't,
20 like -- especially with Bitmain.

21 But if -- if I am ordered to produce the list of the
22 custodians, I think that Ms. Colbath should also be providing
23 the same list of where they collected all of their social
24 messaging from, just -- that just seems fair to me.

25 THE COURT: I'll order that -- that both parties

1 provide a list of individuals whose phones, computers,
2 et cetera, were -- that information was obtained from, both
3 sides. That's fair.

4 MR. MURPHY: Thank you, Judge.

5 And if I could just -- I've got some yellow tabs.
6 I just want to hit some other points for all of our radar.

7 I had -- I had hoped today that we would address
8 keeping the September 17th discovery cutoff date and not
9 moving that, as the MineOne defendants want to do, to
10 September 30th.

11 That's a very important issue in my mind. There was
12 that.

13 I also want -- obviously, I wanted to hit on all the
14 objections to those subpoenas on August 5th and the ones that
15 they're trying to issue now that are the subject of my
16 emergency motion.

17 I mean, they're just trying -- they're just papering
18 the world and all our -- our investors with those kinds of
19 things. And I -- I'll hold my tongue on those.

20 I wanted to visit with you about the six depositions
21 that BCB would like to take before the discovery cutoff and
22 how important those are. Three of them are from Bitmain
23 Georgia lawyers, and they're not even here today to
24 participate, so that kind of short-circuited that.

25 I wanted to talk about the four big requests for

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ARGUMENT - GOTTLIEB

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1 production from Bitmain Georgia, but their lawyer's not here,
2 so we don't get to talk about that.

3 I'm just about here at the end of my to-do list.

4 I don't think the Court asked Ms. Colbath to address her
5 spoliation charge that she made about BCB's website back on
6 July 25th that I responded to on July 30th. I think it's a
7 nonissue, but, if she thinks it is, she can tell you.

8 I wanted to ask the Court to order the MineOne
9 defendants to produce all of their documents to us in the
10 Relativity format at their cost, just as BCB has had to
11 produce all of its documents to the MineOne defendants at
12 BCB's cost.

13 It's one of those is -- if it's good for the goose,
14 it should be good for the gander kinds of things. That is an
15 issue.

16 And then, obviously, the -- the big issue is that we
17 should not have to produce documents regarding our
18 capitalization and funding.

19 And I think that covers my Christmas wish list today.

20 MR. GOTTLIEB: Your Honor, can I -- I haven't spoken
21 a lot on this, but can I just be heard on that one issue about
22 the -- the information that -- that plaintiff -- that
23 defendants are seeking from BCB about their capitalization?

24 THE COURT: Yes.

25 MR. GOTTLIEB: There's been a lot of issues in this

1 case regarding whether or not BCB came to the table able to
2 perform and what their expertise was.

3 They've spent a lot of discovery time -- a massive
4 amount of discovery time -- seeking capitalization information
5 from all the defendants. In fact, we just -- like I just
6 said, while we were in mediation we got hit with over 190 --
7 150 requests for admission, document production. A lot of it
8 has to do with the capitalization of the -- the defendants and
9 who's putting up what, how much money was put in, how many
10 shares were allocated to who.

11 I don't know what relevance any of those things have,
12 but, since Mr. Murphy likes to use the term "good for the
13 goose, good for the gander," I agree with him that what's good
14 for the goose here is good for the gander. We need to also
15 see all that information regarding their capitalization for
16 the same reasons, whether or not they had sufficient capital
17 to be able to do the types of things that they said that they
18 were able to do when they were putting these facilities
19 together.

20 So I think that there's a little hypocrisy going on
21 here, and I just want to point that out to the Court.

22 In terms of the discovery schedule, all of us are
23 having to be burdened by the fact that all this -- these
24 discovery issues are going on back and forth, mostly between
25 plaintiff and MineOne. I'm not casting aspersions on anyone

1 as to -- you know, if they feel they need to make these
2 motions, that's fine, but it's impacting all the other
3 defendants in terms of how we can begin to go forward because
4 we have a September 17th cutoff date.

5 We haven't even begun one deposition. We don't even
6 have a glean into who's going to be deposed, when they're
7 going to be deposed. And all I hear from plaintiff's counsel
8 is that "We do not want to move this."

9 Now, I understand why he doesn't want to move it, and
10 it's not an unreasonable reason. It's because the dispositive
11 motion cutoff date is in October, early October. And
12 Mr. Murphy's right that I think he has a right to have his
13 deposition transcripts in hand by the time the dispositive
14 motion date is coming around. So on that -- I give him that.

15 But I do believe we're going to fall into a problem
16 where we're just never going to get these deposition dates
17 done by September 17, and, therefore, we're going to have to
18 come with our hats in our hands to the Court asking not only
19 for an extension on that but probably the dispositive motion
20 cutoff date, as well.

21 So I just -- I know -- Pat, you're shaking your head.
22 You don't want to do that. I just don't know how this is
23 going to be possible.

24 And I'm not blaming anybody. I just don't know how
25 it's going to be done.

1 MS. COLBATH: Well, Your Honor, might I weigh in?

2 BCB's counsel said I went and have asked for the
3 discovery cutoff to be adjusted. I never wrote that; I never
4 said that; I never had a conversation with -- with Mr. Murphy.

5 We have the September 17th date. I have written six
6 times to all counsel since July saying "We need an all-hands
7 call with your calendars out; we need to hammer out a logical
8 schedule."

9 I said it with regard to the subpoenas that I issued.
10 I said, "Guys, control dates. We've got to get these out the
11 door. Witnesses have to know they're on the radar screen."

12 But all of us need to sit down and talk about
13 scheduling. I was the first one to put my schedule out there
14 for everyone, when the clients would be on vacation, when I'm
15 on vacation, what particular days I had other hearings.

16 Mr. Murphy has not taken me up on that conference
17 call. I've asked six times.

18 When -- when you went through your list of things
19 that Mr. Murphy represented that he had done, you said that he
20 had represented that he produced all text messages, WeChats,
21 et cetera.

22 Your Honor, if you'll recall, he initially said that
23 he had produced all of them and then he said "I need to walk
24 that representation back because I'm not sure I have produced
25 all of the text messages and WeChats."

1 And so I would like a date certain, presumably by the
2 end of this week because these should have been produced back
3 in February -- you know, in -- in May when he finally produced
4 documents in the proper format. I'm prejudiced by not having
5 all of this material. So he acknowledged that he thought he
6 had not done a fulsome production on that.

7 THE COURT: Hang on. Hang on, Ms. Colbath. That's
8 not what I heard him say.

9 I heard him say that he thought his clients had done
10 everything they were supposed to do and, obviously, if there's
11 some random email that didn't get caught up in their search or
12 text message, that he could not -- I mean, nobody could ever
13 say with 100 percent certainty "We got every last shred" but
14 "We've made every effort." That's what I heard him say but
15 maybe I'm mistaken.

16 Mr. Murphy, do you want to address that?

17 MR. MURPHY: No. There's -- there's nothing further
18 to add on that.

19 I just don't know what we're going to keep arguing
20 about, what you want to talk about today. I have a lot to say
21 about the other things, about the discovery schedule and the
22 reasons why we need to keep --

23 THE COURT: Well, I'm -- hold on. I'm going to tell
24 you right now I don't have the authority to extend any
25 discovery deadline today.

1 Judge Johnson wants to hear any issues with discovery
2 deadlines, so I'm not going to be touching any discovery
3 deadline today so --

4 MS. COLBATH: Your Honor, that --

5 THE COURT: Excuse me, Ms. -- nope. Nope. I'm
6 speaking.

7 Do not interrupt me. That was one of the ground
8 rules I set. If I want to hear from you, I'll let you speak.
9 But I'm not done speaking yet.

10 So I am concerned about the discovery, the deposition
11 schedule, very concerned about that.

12 I want to touch on, Mr. Murphy, a few things and --
13 hold on. Let me go back.

14 Mr. Murphy, to your knowledge, have your clients made
15 every effort to find all of the responsive text messages,
16 emails, WeChats, WhatsApp, Skype, everything else?

17 MR. MURPHY: To my knowledge, Your Honor.

18 THE COURT: So you don't believe there's any other --

19 MR. MURPHY: I can't certify -- I can't honestly
20 certify that because I don't have personal knowledge of that.
21 But to my knowledge.

22 THE COURT: All right. Well --

23 MS. COLBATH: Your Honor, he just --

24 THE COURT: No. No. Ms. Colbath, when I want to
25 hear from you, I will ask to hear from you. Don't keep doing

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1 this.

2 We've spent a lot of time on the issues you wanted to
3 raise before the Court. Stop interrupting me.

4 Mr. Murphy, I'm just going to say by Friday I want
5 you to get with your clients, make sure they've made every
6 effort to find and produce all of those things and produce
7 anything that might be left.

8 But you can get with your clients and make sure they
9 have done everything they're supposed to do to find all
10 responsive text mails, emails, WeChats, WhatsApp, Skypes,
11 et cetera.

12 So I guess one of my concerns is I -- I don't feel
13 like there's been any sort of meaningful meet and confer on
14 who's going to be deposed and when.

15 I'm looking at your submission, Mr. Murphy, and your
16 list of depositions you would like to take. Mr. Murphy, have
17 you all had a chance to meet and confer on a deposition
18 schedule?

19 MR. MURPHY: Great question, Your Honor.

20 We've had chances to meet and confer, and I've
21 written letters asking that we meet and confer, and we have
22 not met and conferred.

23 Instead, it just seems like it's dueling letters of
24 me writing to the other side, suggesting the names and
25 proposed dates that I would like to do it and then Ms. Colbath

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ARGUMENT - GOTTLIEB

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1 writing back saying that she wants to take 20-plus depositions
2 but not providing any dates.

3 Bitmain Georgia, who's not on our phone call today,
4 has never said a word about doing any depositions. Marc
5 Gottlieb for BitOrigin and SonicHash has never said a word
6 about doing any depositions.

7 That's the status.

8 MR. GOTTLIEB: Can I be heard on that, Your Honor?

9 THE COURT: You may.

10 MR. GOTTLIEB: That is absolutely not true, Pat. You
11 know that.

12 You and I had many discussions about depositions.
13 And whereas I didn't say anything formal to you, I said to you
14 "Let's please, all of us, get together and propose dates,
15 don't -- don't" -- I said "We cannot each pick 20, 30 people."

16 What I said to you was -- you may recall this -- was
17 that if we each take at least the top five that we want to
18 produce and agree on dates at least for those five each, then
19 we can get things done, and then we can add to that as we go
20 forward.

21 Did I not have that conversation with you? Because
22 if I did, then you're misrepresenting what I said to the
23 Court.

24 MR. MURPHY: I think -- I'll just wait until Her
25 Honor.

1 THE COURT: Go ahead, Mr. Murphy.

2 MR. MURPHY: Okay.

3 Marc called me last Friday and asked me about
4 extending the discovery cutoff date -- that he and Paula
5 wanted to do that -- to September 30th. I told him I objected
6 to that for some of the reasons that he shared with you. And
7 Marc has also shared with me that it does make sense to try to
8 get together to figure out the depositions.

9 What I was just simply saying to Your Honor is
10 Marc Gottlieb has never shared with me any depositions he
11 wants to take or any of the dates that he wants to do it. But
12 Marc is correct that he's said in a very general way that we
13 ought to meet and confer about depositions.

14 THE COURT: Okay. Well, it's, you know, difficult
15 for me -- everybody's saying "I reached out and did this" and
16 everybody's saying, "No, nobody did," so that's hard for the
17 Court to mediate, obviously.

18 But -- I mean, you all are going to have to find a
19 time to sit down and hash out exactly -- this -- what I want
20 is for you all to meet and confer and then provide the Court a
21 list of people you're fighting over and why, and we could
22 discuss those.

23 But, you know, these deadlines are coming up, and
24 you've got so many lawyers that I can't imagine what your
25 scheduling -- this has got to be the biggest nightmare ever

1 because it doesn't feel like anybody wants to be particularly
2 cooperative with anybody else. But it -- you guys are going
3 to have to sit down and figure it out.

4 Let me look at a calendar here.

5 So we've got less than 30 days to your discovery
6 cutoff?

7 MR. GOTTLIEB: Yes.

8 THE COURT: About four weeks from tomorrow it looks
9 like.

10 MR. GOTTLIEB: That's about right.

11 MR. MURPHY: The parties have been allowed to do
12 discovery the whole -- the last 11 months and it hasn't
13 happened.

14 THE COURT: That's --

15 MR. MURPHY: The parties have chosen not to take any
16 depositions other than the seven-hour deposition that I think
17 Your Honor was a part of with Tim Desrochers back in April.
18 That's the only depo that's been taken.

19 MR. GOTTLIEB: Well, in fairness to that, it's not
20 because we haven't wanted to; it's because we've had all these
21 battles over documents and all these other things, and nobody
22 can get to depositions until all these things are resolved.

23 And I'm not going to say it's anyone's fault, but
24 that's the reason. It's not because no one's wanted to take
25 depositions. We're fighting over everything else.

1 THE COURT: I want to quickly touch on --
2 Ms. Colbath, do you have a copy of Mr. Murphy's August 16th
3 letter? With the issues he wanted to address today.

4 MS. COLBATH: Yes. And -- and, unfortunately, I'm
5 going to have to defer.

6 We -- we advanced the time for this because I --
7 I had a -- a hard stop at 6:15 my time for a 6:30 in-person
8 meeting.

9 But I -- I have it in front of me.

10 THE COURT: I just saw that Mr. Murphy had provided a
11 list on page 2 of -- one, two, three, four -- four MineOne
12 individuals listed.

13 MS. COLBATH: Yeah. There are two there. He
14 continues to associate people that have nothing to do with
15 MineOne. He just puts that in parentheses. There are two
16 people that I control there, Jiaming Li and Erick Rengifo.

17 I provided Mr. Murphy with deposition dates for
18 Mr. Rengifo. He's been on vacation for part of August. He
19 has the dates.

20 THE COURT: And what about -- was Dr. Li the other?

21 MS. COLBATH: Yes.

22 Dr. Li is a resident of mainland China. His passport
23 is with the US embassy and will likely not be returned until
24 the CFIUS certification under the Presidential order is
25 delivered, so he cannot testify on the mainland.

1 We are working with trying to get a passport so he
2 could travel to Hong Kong, Singapore, another location. And,
3 obviously, the expenses in connection with that is something
4 that I will take up with Mr. Murphy. But this is fairly well
5 known, that you cannot give testimony -- it's a crime -- in
6 China.

7 So it may be that he will not have his passport until
8 after the 17th, but we are willing -- ready, willing, and
9 able, as soon as he does, to present him for deposition.

10 Those are the two witnesses that I control.

11 THE COURT: All right. You don't have -- you don't
12 have any objections to the actual taking of those? You're
13 just trying to schedule?

14 MS. COLBATH: No. No. And I've communicated that to
15 Mr. Murphy on multiple occasions.

16 THE COURT: Mr. Murphy, what about Chong Wang? Who
17 is -- who -- does anybody control Mr. Wang?

18 MR. MURPHY: Yes. Here's the -- here's the scoop on
19 Chong Wang, Your Honor, and this applies to the Defendants
20 MineOne, BitOrigin, and Terra Crypto.

21 Chong Wang was one of MineOne's three cofounders and
22 is known as the big boss in China, who made all of the
23 high-level decisions about the North Range site. He is the
24 documented beneficial owner of the North Range site.

25 He was also the CEO and executive chairman of

1 BitOrigin, Mr. Gottlieb's client, from 2022 until recently, in
2 April of '24, when he coincidentally resigned with BitOrigin
3 when the heat got hot with CFIUS.

4 But, yet, the defendants say they don't control
5 Mr. Wang. But they do control Mr. Wang, and that's why I want
6 him. I want to depose the big boss, the beneficial owner of
7 the North Range site.

8 THE COURT: All right.

9 Ms. Colbath, I'm sorry. Are you needing to --

10 MS. COLBATH: I -- I -- I am. But . . . I've never
11 spoken with Mr. Wang. Mr. Wang is not a principal of the
12 MineOne . . . Mr. Murphy has a document that someone else
13 drafted that on page like 64 someone plugged in a name, a
14 Mr. Wang.

15 And I cannot produce him, wouldn't even know where to
16 go to find him, and I've said this to Mr. Murphy for months
17 and months and months and encouraged him to please take
18 advantage of the Hague Convention on evidence.

19 I don't know this individual. I don't know where he
20 is, never spoken to him. And so Chong Wang -- as -- I guess
21 he's -- was with BitOrigin. I don't represent BitOrigin.

22 So -- and Mr. Murphy knows that starting on
23 August 23rd through September 4th -- I announced this back in
24 July -- I will be on vacation. I take about three weeks
25 a year and I'm off grid.

1 And so Mr. Murphy is intentionally scheduling
2 depositions when I told him back in July I would be on
3 vacation.

4 THE COURT: All right. Well, I think -- I don't want
5 to give short shrift to Mr. Murphy's request, but I think we
6 are running out of time for today.

7 And I also think we need to have somebody -- I'm a
8 little bit frustrated with Bitmain's lack of interest in
9 participating today.

10 So I think that -- what I would like to do is
11 schedule a second conference, hopefully this week -- before
12 your vacation, Ms. Colbath -- and go through some of these --
13 some of Mr. Murphy's issues, as well.

14 MR. GOTTLIEB: May I make a suggestion, Your Honor.

15 THE COURT: Certainly.

16 MR. GOTTLIEB: I'm trying to get -- would love to get
17 the stuff done.

18 By the way, just circling back -- because we were
19 talking about Mr. Wang, who was originally with my client,
20 BitOrigin.

21 I also want to just respond that we, too, have no
22 ability to get in touch with Mr. Wang. I mean, my
23 understanding was that, at some point in time after he left
24 the company, he sort of went off grid.

25 He left -- I don't know what's going on in China, but

1 please be -- please appreciate the fact that we don't control
2 a lot of things that go on in China. We don't have any say as
3 to who is where or when they can come to the United States.
4 We're at a little bit of a disadvantage here.

5 And so with a guy like Mr. Wang, I don't know that
6 anyone's going to be able to produce him, and it's not for our
7 lack of wanting to or not wanting to participate in this
8 litigation. We are just stuck with what we're stuck with.

9 In terms of dates, one of the things I was going to
10 suggest is, before we plug in names, maybe what we could do is
11 at least put a calendar of available dates together. And once
12 we have those available dates to plug in, then we can plug in
13 the personnel to go with those dates.

14 This way, no one is taking the lead and saying
15 "I want to do this person on this date and this date" when
16 Ms. Colbath may be on vacation. I know I have a hearing --
17 I'm on trial September 9th through 11th. And that's going to
18 be a problem for me, but I'm trying to figure our way through
19 this.

20 I think, if we have the available dates, that would
21 help tremendously.

22 THE COURT: And, Mr. Gottlieb, how long do you think
23 it should take for everybody just to put their available dates
24 out there? I don't know the dates but --

25 MR. GOTTLIEB: Again -- tomorrow.

1 THE COURT: Okay.

2 I'll put that down. By the end of tomorrow, all
3 counsel is to exchange dates available for depositions without
4 regard to the individual deponents.

5 MR. GOTTLIEB: Correct.

6 Can we also, just to clarify -- because one of the
7 things that's going to become problematic is whether or not --
8 is it going to be, A, by, let's say, Zoom? Which would make
9 things a lot easier for a lot of people.

10 And I think we just need to know whether they're
11 going to be virtual or live. That's going to impact a lot of
12 things.

13 MS. COLBATH: I feel strongly that the principals
14 should be in person. I know my client, who has an accent
15 and -- and it would just be much -- would facilitate it if
16 Mr. Murphy took Erick Rengifo's deposition in person, and
17 I would like to take the BCB folks in person, as well.

18 MR. MURPHY: I absolutely object to that, Your Honor.
19 The expense of going to New York City to do Rengifo is
20 ridiculous in this age of Zoom.

21 All of these depositions for the sake of counsel and
22 the parties should be by Zoom. The Court well knows its local
23 rules specifically allow for it. It works well.

24 And -- and I implore you to allow all depositions to
25 be done by Zoom.

1 THE COURT: Okay. We can -- we'll cross that bridge
2 when we get to sort of the list of depos and availability.

3 So let's . . . I'm going to have my JA -- I do have
4 some availability this week -- and I realize it's very short
5 notice for a lot of people. But I'm going to have her reach
6 back out to you and see if we can't schedule another -- at
7 least another hour because I want to touch on some of
8 Mr. Murphy's requests in his letter, as well.

9 And then, hopefully, you'll have an opportunity to
10 exchange your availability dates.

11 I would also like you all just to each exchange a
12 list of who you want to depose -- no dates -- and who objects
13 to that or . . . their availability to be produced, I guess is
14 what I'm saying. And it seems like that should -- could be
15 done by the end of tomorrow, as well.

16 So each party's to provide a list of who they wish to
17 depose, and then along with that list I want you to put
18 down -- if you think that a party should be responsible for
19 producing, I want specifically who you think the party
20 responsible to produce is.

21 And then we can hash that out, as well.

22 Again, I'm not going to have authority to extend any
23 discovery deadlines, but I am in contact with Judge Johnson
24 and his chambers. They're keeping an eye on what's going on
25 with these discovery issues.

1 Jess would like to do that now, but I know,
2 Ms. Colbath, you're trying to go and we don't have Bitmain, so
3 I'm not sure we can schedule anything today.

4 MR. MURPHY: What -- can you tell me, Your Honor,
5 what days you're maybe looking at?

6 THE COURT: I mean, I have . . . some availability
7 tomorrow afternoon, later in the afternoon, as well as later
8 in the afternoon on Wednesday.

9 Let me look here.

10 MR. MURPHY: I'll just share with everybody I'm good
11 anytime on Wednesday, bad tomorrow.

12 THE COURT: And I may have some time late morning on
13 Thursday.

14 MR. MURPHY: And I'd be available then, too, Judge.

15 THE COURT: All right.

16 I'll have Jess reach out to make sure we have
17 somebody from Bitmain with us, not optional for them to
18 attend.

19 And then -- so I want to discuss some of the
20 deposition issues and then, like I said, some of the other
21 issues you've raised, Mr. Murphy.

22 I want to go back for a minute on the issue of the
23 six subpoenas to the investors as well as these documents
24 regarding capitalization and funding.

25 Like I said, Mr. Murphy, you have -- you submitted a

1 motion -- in terms of the one that you filed last night --
2 that does address some of this information. Do you believe
3 that you need additional briefing on -- on this? Is there
4 information that I've covered here that you feel like you
5 didn't cover in your motion?

6 MR. MURPHY: No.

7 I think if you look in two places, both in that
8 emergency motion I filed last night with respect to the
9 brand-new subpoenas that MineOne has given notice of -- but
10 now Ms. Colbath says she hasn't actually served those three
11 passive investors -- but then I also sent good information to
12 Your Honor in my letter of August 16th to the Court and the
13 attachments.

14 Those need to -- somehow we need to resolve those on
15 whether Dr. Fincham in Ohio, whether James Quid in Illinois,
16 whether CMV and Bayview have to produce documents, whether
17 they have to show up for their deposition -- we need to bring
18 that to a head because all those people are just hanging out
19 there -- and now they've got two more -- people are just
20 hanging out there waiting for the Court to say do we have to
21 do anything or -- or not.

22 THE COURT: Well, we're not going to do the
23 depositions of -- the end of this week.

24 So I'll rule on that. And I think that Ms. Colbath
25 acknowledged that the motion itself delays some of those

1 things. But I'm going to say the request for production and
2 the depositions to the investors are on hold for now. This is
3 an issue the Court wants further briefing on.

4 What I'm trying to get out of you, Mr. Murphy, if you
5 feel like you've sufficiently briefed these issues in the
6 motion filed last night or you need additional time.

7 MR. MURPHY: I do need some additional time.

8 I told Marc Gottlieb I had both my anniversary and my
9 70th birthday, and that took a little into my weekend, and it
10 made for a hard weekend trying to throw that thing together
11 last night, but I do need a little more time to bring
12 something more to bear for you.

13 THE COURT: All right.

14 MR. MURPHY: Not a lot to bear but some more to bear,
15 please, so --

16 THE COURT: And if I give you a deadline of Friday,
17 is that sufficient?

18 MR. MURPHY: I'll honor that.

19 THE COURT: And can you include -- I mean, it's sort
20 of a . . . I want you to include, Mr. Murphy -- it's not
21 exactly the same issue, but I want you to brief your refusal
22 to provide the Black Hills Energy request for proposal
23 documents. Include that issue, as well.

24 MR. MURPHY: Okay. We will.

25 THE COURT: And then -- I'm sorry. You have a

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1 question?

2 MR. MURPHY: Were the other two issues really what
3 I call the subpoena issues to the passive investors, all five
4 or six of them, and then interrelated with that is the
5 financing information and capitalization that we've talked
6 about?

7 THE COURT: Correct, yeah.

8 MR. MURPHY: Great. I can do it all.

9 THE COURT: All right.

10 And then, Ms. Colbath, you've got a vacation in
11 there.

12 I'm not sure how this -- how you feel about your time
13 to respond. Do you need something outside the usual?

14 MS. COLBATH: Well, that --

15 THE COURT: Go ahead.

16 MS. COLBATH: The floor is mine?

17 THE COURT: Yes.

18 MS. COLBATH: Okay.

19 So we would like -- this -- this motion is not --
20 oops. Something just happened.

21 The motion is -- is not simply on quashing subpoenas.
22 It's to strike our answer; it is for an award of attorneys'
23 fees; it is to revoke my pro hac vice admission. And so we
24 would like the full 14 days to respond to this.

25 THE COURT: Ms. Colbath, I'm not going to address any

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1 sanctions that were requested because I believe default was
2 also requested.

3 MS. COLBATH: Correct.

4 THE COURT: As a Magistrate Judge, I don't have
5 authority to hear sanctions.

6 I'm going to strictly deal with discovery and what
7 needs to be provided, and then any further argument on
8 sanctions, default, that will be left at this time to Judge
9 Johnson. I don't have the authority to grant a default, so
10 I don't feel like I can rule on the sanctions request of that
11 motion.

12 Does that make sense?

13 MS. COLBATH: It does. It's just it's a little
14 difficult to sift through and -- and determine on -- I think
15 it was a 43-page motion -- what I should respond to.

16 But, in any event, I return on September 4th. I'm
17 off grid camping. And so I would ask until September 4th so
18 at least whatever my office prepares I have an opportunity to
19 look at before we file it.

20 THE COURT: And so you can do that and have that to
21 the Court by September 4th?

22 MS. COLBATH: Correct.

23 THE COURT: Okay. I will give you until
24 September 4th.

25 MS. COLBATH: I appreciate that.

1 THE COURT: And then, Mr. Gottlieb, if you want to
2 jump into the response, you'll have the same deadlines as
3 MineOne.

4 MR. GOTTLIEB: Well, that -- the response doesn't
5 really apply to me. The motion doesn't -- I don't think
6 there's anything in there that applies to me.

7 I would beseech Mr. Murphy to maybe think about
8 withdrawing that motion for sanctions and for -- for defaults
9 and things like that. I don't know what's -- if it's doing
10 anything but delaying, causing more cost to everybody.

11 I'll leave that to his good judgment. But I don't
12 think we have any -- any skin in that game other than the fact
13 that I oppose it. I think that --

14 THE COURT: Well, you -- if you wish to respond, you
15 can. Certainly --

16 MR. GOTTLIEB: All right. I appreciate that,
17 Your Honor.

18 THE COURT: Same for Bitmain. I don't know if
19 they'll have a dog in that particular fight, but, if there's
20 anything you want to say about it, you -- it will be all on
21 the September 4th deadline.

22 Ms. Colbath.

23 MS. COLBATH: Yeah.

24 Could we have BCB's counsel file whatever new motion
25 they're going to file by noon on Friday?

1 THE COURT: Mr. Murphy, can you get it done by noon?

2 MR. MURPHY: New motion?

3 THE COURT: Well, if -- whatever you're going to
4 supplement or add to . . .

5 MR. MURPHY: I thought it was, yeah, more of a brief,
6 Your Honor, on -- I didn't think it was a motion. I guess --
7 I guess it would be a motion for protective order. So Paula
8 may be right about that, yeah.

9 Okay. I'll call it a motion for protective order,
10 and I'll get that filed Friday.

11 THE COURT: Can you do it by noon?

12 MR. MURPHY: Well, I have to because I'm taking a
13 deposition at 8:00 on Friday morning and then going to a
14 funeral in Cheyenne. So I really have to get it pretty much
15 in the can by Thursday night.

16 THE COURT: All right. Well, we'll say by noon
17 and --

18 MR. MURPHY: Noon Friday would be lovely.

19 THE COURT: -- you can do it Thursday. Okay.

20 All right. Anything else, Ms. Colbath?

21 MS. COLBATH: Yes.

22 I . . . Mr. Murphy acknowledged that he has a number
23 of emails that have not been produced, and we would just like
24 a date certain -- by Friday of this week, please -- that he
25 finally complete his email production.

1 THE COURT: Do you have additional emails,
2 Mr. Murphy, to produce?

3 MR. MURPHY: You know, I don't know that I do.
4 I don't have personal knowledge of that. I'll have to talk
5 to BCB.

6 But to the extent that we have them, we'll get those
7 to them in Relativity production and -- and hope that they'll
8 also return the favor and -- and produce their documents to us
9 in Relativity.

10 THE COURT: So my -- you know, we talked earlier
11 about making -- just checking in with your clients to make
12 sure they've done what they need to do for emails, texts,
13 WeChat, WhatsApp. That covers emails . . . written
14 correspondence, I guess, of -- in whatever format. So we'll
15 include emails in that, as well.

16 MR. MURPHY: Okay.

17 THE COURT: All right.

18 Ms. Colbath, anything else? I'm trying to get this
19 done so you can move on.

20 MS. COLBATH: That's it.

21 I'm ready to -- not -- not that this hasn't been
22 enjoyable, but I'm running a little bit behind. I appreciate
23 your time, Your Honor.

24 THE COURT: And, Mr. Murphy, we'll set, hopefully, a
25 time this week, and I want to get to the issues -- I don't

1 want to give you short shrift on some of your issues, as well.

2 Okay?

3 MR. MURPHY: Thank you very much, Your Honor.

4 MS. COLBATH: Very good.

5 THE COURT: And, Mr. Gottlieb, thank you for being
6 here, as well. We'll get everybody back on the line this week
7 and see if we can't hash out some more of these things.

8 I appreciate counsel's tone and general levels of
9 respect for the Court, as well. I think it went well today,
10 and I do appreciate it.

11 So have a good afternoon. And I'll see you again
12 later this week.

13 MR. GOTTLIEB: Okay. Thank you, Your Honor.

14 MR. MURPHY: Thank you, Judge.

15 (Proceedings adjourned at 4:32 p.m., August 19, 2024.)

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1 C E R T I F I C A T E
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5 I, MELANIE HUMPHREY-SONNTAG, Federal Official Court
6 Reporter for the United States District Court for the District
7 of Wyoming, a Registered Diplomate Reporter, Certified
8 Realtime Reporter, and Certified Realtime Captioner, do hereby
9 certify that I remotely reported by realtime stenography the
10 foregoing proceedings contained herein on the aforementioned
11 subject on the date herein set forth and that the foregoing
12 pages constitute a full, true, and correct transcript.

13

14 Dated this 22nd day of August, 2024.

15

16

17

18 /s/ Melanie Humphrey-Sonntag

19

20 MELANIE HUMPHREY-SONNTAG
RDR, CRR, CRC
21 Federal Official Court Reporter

22

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